

Elections and Voting; SB 221

SB 221 amends law on election-related subjects including procedures for write-in candidates for certain elected offices, election administration, qualifications for office, dates and deadlines, notices, certain election crimes, and equipment.

Affidavit for Write-in Candidacy

Deadline to Submit Affidavit for Write-In Candidacy

Current law requires a write-in candidate for the office of President, Vice President, Governor, Lieutenant Governor, or any other statewide elected office to submit an affidavit of write-in candidacy to the Secretary of State (Secretary) by 12:00 noon on the second Monday preceding the general election for such office. The bill changes the deadline applicable to these offices to 12:00 noon on the fourth Monday preceding the general election for such office.

The bill adds a requirement to file an affidavit of write-in candidacy for the offices of U.S. Senator and U.S. Representative with the Secretary by 12:00 noon on the fourth Monday preceding the election at which the write-in candidate seeks nomination or election.

The bill expands the provision to require an affidavit for write-in candidacy to be filed with the Secretary for an individual wishing to run as a write-in candidate for the State House of Representatives, State Senate, or the State Board of Education. The bill requires the write-in candidacy affidavit to be submitted by 12:00 noon on the fourth Monday preceding the election at which the write-in candidate seeks nomination or election.

The bill adds a requirement for any individual wishing to run as a write-in candidate for district judge, district magistrate judge, district attorney, any county officer, or any city officer of a city of the first class to file an affidavit of write-in candidacy with the appropriate county election office by 12:00 noon on the fourth Monday preceding the election at which the write-in candidate seeks nomination or election.

Ballots

The bill removes a provision that states failure to make a cross or check mark in the square to the left of the write-in candidate name would not invalidate that portion of the ballot unless it is impossible to determine the voter's intention. The removal of this provision means the voter must mark the square by the write-in vote in order for the vote to be counted.

Board of Canvassers

The bill prohibits the Board of Canvassers from counting write-in votes for a candidate for the U.S. Senate, U.S. House of Representatives, State House of Representatives, State Senate, State Board of Education, district judge, district magistrate judge, district attorney, any county officer, or any city officer of a city of the first class unless the candidate has filed an affidavit of candidacy.

Election Administration

Secretary of State

The bill states the Secretary is responsible for assisting and advising county election officers in conducting elections in compliance with federal and state laws and rules and regulations.

The bill adds a deadline—within 20 days after receipt of an independent nominating petition, but not later than the date of the meeting of the State Board of Canvassers—by which the Secretary must determine the validity of independent nominating petitions. If any independent nominating petitions are found to be invalid, the bill requires the Secretary to notify the candidate on whose behalf the petitions were filed of that finding and the reason for it. The bill authorizes the candidate to object to the finding in accordance with procedures in continuing law.

The bill authorizes designees of the Lieutenant Governor, the Attorney General, and the Secretary, as well as those state officers, to determine the validity of any certificate of nomination, nomination petition, or declaration of intention to become a candidate for a national or state office and to constitute the State Board of Canvassers.

The bill authorizes the Secretary, after consulting with the Attorney General, to dismiss a complaint alleging violation of federal voting equipment requirements as specified in Title III of the Help America Vote Act (HAVA), if the complaint fails to allege facts.

County Election Officer

The bill states each county election officer is the sole public officer responsible for planning, conducting, and coordinating elections within that county and is responsible for ensuring the elections comply with federal and state laws and rules and regulations.

The bill prohibits any county election office or county election office employee or agent from creating, or permitting any other person to create, an image of the hard drive of any voting system, optical scanning equipment, or any other voting system that contains a hard drive component without the written consent of the Secretary. The bill also requires each county election officer to create a backup copy of the hard drive of any electronic or electromechanical voting system, optical scanning equipment, or any other voting system that contains a hard drive component immediately before and after any system updates, repairs, or improvements and after each general election. County election officers will be required to maintain such backup copies in a secured location for not less than 22 months.

The bill requires any appointed election commissioner, not just a commissioner in a county of a certain population size, to be responsible for establishing precinct boundaries.

The bill prohibits a county election officer from mailing a ballot to a voter unless that voter has submitted an application for an advance voting ballot or has permanent advance voting ballot status, or the election is conducted pursuant to the Mail Ballot Election Act.

The bill requires the county election officer to publish on the website of the county election office, and furnish to election boards as required by continuing law, printed instructions to voters, a list of voters' rights and responsibilities, a sample ballot, notification of the date of the election, and polling place hours.

Other

Curing a ballot. In the Mail Ballot Election Act, the bill adds signature verification requirements to match those applicable to advance voting by mail ballots, to require the county election office to attempt to contact each person who submits a ballot for which the signature does not match the signature on file and allow the voter the opportunity to correct the deficiency before the county canvass. Signature verification will not be required if the voter has a disability preventing signature or having a signature consistent with the voter's registration form. The bill authorizes signature verification by electronic device or human inspection. [Note: These provisions are present in continuing law for advance voting ballots.]

Poll book. In election definitions of general application, the bill amends the definition of "registration book" to require each page of the book to contain a specified declaration regarding voter identity and compliance with election laws. The bill adds a definition of "abstract" to mean a list of election results for a particular precinct or district with the total votes for each candidate and for or against each constitutional amendment or question submitted.

Provisional partisan primary ballots. In law regarding the original canvass of elections, the bill requires canvassers to count votes for those offices or issues for which an unaffiliated voter may cast a vote if a registered voter who is unaffiliated with a political party has cast a provisional partisan ballot in a primary election.

Poll agents. The bill authorizes an authorized poll agent to be present and observe the proceedings at all recounts and post-election audits.

Post-election audits. In law regarding post-election audits, the bill specifies that one constitutional amendment question, if any, must be audited.

Recounts. In law regarding recount procedures, the bill:

- Authorizes, if the recount is regarding a constitutional amendment, any registered elector who cast a ballot for a constitutional amendment to request a recount in one or more counties;
- Changes the deadline for filing a request for a recount with the Secretary from the second Friday following the election to the day following the last meeting of the county board of canvassers applicable to the election for which the recount is requested;
- Requires a person requesting a recount, who must file a bond to pay costs of the recount, to file that bond contemporaneously with a request for a recount; and

- Specifies that no bond is required for a recount when the election returns find a candidate was defeated by no more than 0.5 percent of the votes.

Open primaries. The bill requires each political party entitled to nominate candidates by primary election to notify the Secretary in writing on or before January 15 of any year in which a partisan general election is to be held whether voters who are unaffiliated with that party may vote in the party's primary election.

Qualifications for Office

County election officer. The bill prohibits anyone convicted of an election-related crime described in Chapter 25, Elections, of the *Kansas Statutes Annotated*, or a crime substantially the same in any other jurisdiction, from serving as a county election officer.

The bill authorizes filling a vacancy in the office of county clerk by appointment of a qualified elector of the state, replacing a requirement that the qualified elector live in the county at the time of appointment. [*Note:* Continuing law requires the Governor to appoint the person elected at a district convention of precinct committeemen and precinct committeewomen.]

Sheriff. In law regarding the appointment of a sheriff as a result of a vacancy, the bill requires any individual appointed to the office of sheriff to be a qualified elector of the county on the day the individual is sworn in as sheriff.

School and community college boards. In the School Election Act and the Community College Election Act, the bill requires a candidate whose name is inserted on the ballot by the voter to be a qualified elector residing in the district.

Adjusting Election-related Dates and Deadlines

The bill amends several election-related dates. [*Note:* Generally, these amendments remove conflicts with advance voting statutes and allow ballots to conform with a requirement in the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to transmit absentee ballots to UOCAVA voters no later than 45 days before an election.]

Election dates. In law regarding municipal elections required for the issuance of bonds, the bill requires the election to be held within 60 days, rather than 45 days, after compliance with other legal requirements. [*Note:* The statute provides exceptions for irrigation districts or when another procedure is specified.]

In law applicable to an election in a city of the third class regarding whether to sell any municipally owned utility, the bill requires the election to be held within 60 days, rather than 40 days, of the passage of the ordinance.

Notifications regarding candidates. In general election law, the bill changes the deadline by which the county election officer must notify each person nominated for public office from 25 days to 50 days prior to the general election.

The bill also moves from 2 weeks to 50 days before a primary election the deadline by which the county election officer must send a list of candidates to each candidate, and it adds a requirement that the list also be sent to the chairpersons of the political parties of the county. The bill requires the list to include the office, the candidate's name, the city where the candidate resides, and the candidate's political party, as that information will appear on the primary election ballot. The bill authorizes a candidate, as well as the party chairperson, to suggest changes regarding the list to the county election officer, and it changes the deadline for those suggestions from on or before the 11th day before the election to on or before 45th day.

Candidacy deadlines. In the State Board of Education Election Act, the bill changes the deadline for filing a petition or declaration of intention by noon on June 1, the deadline for filing for other offices, rather than June 10.

Initiating a proceeding. The bill changes from 45 days to 60 days before the election the deadline to commence a mandamus or injunction proceeding to compel an election officer to or restrain an officer from placing a name on a ballot.

Establishing precinct boundaries. In law regarding precinct boundaries, the bill requires precinct boundaries to be reestablished the sooner of June 1, replacing June 10, or 45 days after the Legislature has been redistricted in a year ending in "2."

Require Website Notices

The bill requires election-related notices to be published on the county election office website, in addition to publication in newspapers as in continuing law, as specified below.

Notices of upcoming elections. The bill requires notice of the election to be published on the county election website at least 21 days before the election and remain until the day after the election for municipal bond elections and for elections in a city of the third class on whether to sell a utility owned by the city.

The bill requires an appointed election commissioner to give notice of an upcoming election on the website of the county election office of any county where the election is to be conducted, as well as in the official county newspaper, at least 15 days before the election.

The bill requires the county election officer to publish notice of any general election on the county election office website at least 30 days before the election and remain on the website until the day after the election. The bill requires notice in one or more newspapers to be published at least 30 days, rather than 15 days as in current law, before the general election.

In the School Election Act, the bill requires notice of the primary election to be published on the website of the county election office of any county where the election is to be conducted, from June 10 until the day after the election. The bill also requires notice of the general election to be published on the website of the county election office at least 21 days before the election and remain on the website until the day after the election.

In law authorizing the county election officer to establish or divide a township precinct, the bill requires notice of the election to be published on the website of the county election office.

Voter registration. The bill requires notice of the places and dates for voter registration for each election to be published on the website of the county election office and remain on the website until the day after registration closes.

Canvass. The bill requires notice of the original canvass of every election to be published on the website of the county election office.

Election of Precinct Committeemen and Precinct Committeewomen

Eligibility. The bill requires the county election officer to verify the party affiliation of the candidate when a declaration of intention is filed to become a candidate for precinct committeeman or committeewoman.

Continuing law requires a person elected to the office of precinct committeeman or precinct committeewoman if no nomination petitions or declarations have been filed to receive at least five write-in votes. The bill adds the requirements that the person live in the precinct, be a qualified elector, and be a member of such party as shown by the party affiliation list maintained in the county election office.

The bill prohibits a candidate for precinct committeeman or committeewoman from filing a declaration of intention to be a candidate unless that person lives in the precinct.

Term of office. The bill specifies each precinct committeeman and committeewoman will assume the duties of those offices on the day after the primary election and will not be required to take an oath required of all officers elected or appointed under Kansas law before beginning their duties.

Contact information. The bill requires the county election officer to send to the Secretary, within seven days after each primary election in even-numbered years, a list of those who hold the office of precinct committeeman or committeewoman and to notify the Secretary of any updates. The bill requires the county chairperson to notify the county election officer of the name, address, email address (if available), and a phone number or phone numbers (including a mobile phone number, if available) of each elected or appointed precinct committeeman or committeewoman and to report any changes in that information to the county election officer within ten days after the change. The bill requires the Secretary to keep an updated list of all precinct committeepersons and their contact information.

Election Crime

The bill amends the definition of electronic or electromechanical voting system or electronic poll book fraud to add accessing without authorization or facilitating unauthorized access to voting system equipment, electronic poll book equipment, computer programs, operating systems, firmware, software, or ballots, and knowingly publishing or causing to be published any password or other confidential information relating to voting system equipment, electronic poll book equipment, computer programs operating systems, firmware, or software.

The bill amends the definition of optical scanning equipment fraud to add accessing without authorization or facilitating the unauthorized access to optical scanning equipment, and

knowingly publishing or causing to be published any password or other confidential information relating to optical scanning equipment.

Election Equipment

Only for elections conducted in counties that do not use tabulators or optical scanners to count votes, the bill requires:

- The use of separate ballot boxes for various types of elections;
- Ballot boxes to be opened, emptied, and relocked at the time a voting place is opened; and
- A ballot to be folded and the number clipped in the presence of the voter and the election board.

The bill clarifies any voting equipment, as well as facility ballots and voting records and materials as in continuing law, used at a nursing facility, assisted living facility, or hospital-based long-term care unit must be returned to the county election officer.

Additional Provisions

Election commissioner. In law regarding when an election commissioner is appointed by the Secretary, the bill specifies how the Secretary determines the population of a county has exceeded 125,000, the threshold for such appointment, which the bill reduces from 130,000 in current law. The bill similarly amends a related statute transferring election-related duties from county clerks and other municipal officers to the appointed election commissioner.

The bill adds a requirement that the Secretary, in consultation with the chairperson of the board of county commissioners for the county where an election commissioner is to be appointed, form a search committee to identify, interview, and recommend to the Secretary at least three candidates for the position of election commissioner. Members of the search committee shall include:

- The chairperson of the board of county commissioners or a county commissioner as designated by the chairperson;
- A representative of the county's human resources department; and
- Three representatives of the Office of the Secretary.

The bill requires any individual appointed to the position of election commissioner to be a Kansas resident for at least two years prior to appointment and be a resident of the county on the day such election commissioner files the oath of office.

Audits and reports. In a statute regarding elections in a city of the third class; unified school district (except a district with at least 35,000 students); any community college, township, or county office; or a question submitted, the bill removes a requirement for an annual audit of the accounts of the state committee of each political party.

The bill requires the treasurer of a party committee or political committee to file a report of contributions during regular business hours if the report is delivered by hand or express delivery service.

Definitions of general, primary, and special elections. In law applicable to advance voting and in election definitions of general applicability, the bill adds a definition of “special election” and clarifies the definitions of “general election” and “primary election.” The bill defines a special election as one that is not a general or primary election, including, but not limited to, any mail ballot election. The definition specifies that a special election may not be held within 45 days of a general or primary election but may be held on the same day as a general or primary election. The bill makes conforming amendments to an additional statute.

Petition signer address. The bill requires each signer of a nomination petition for Governor and Lieutenant Governor to provide the street and number, if any, of the signer’s residence. Current law requires the street and number to be provided only if the signer’s residence is in a city.

Recall. In law addressing recall of a local official, the bill specifies the appropriate attorney must determine the sufficiency of the grounds stated in the petition for recall within five business days, rather than within five days as in current law.

Other. The bill removes a requirement that an application for an advance ballot transmitted to the voter in person be transmitted in the office of the county election officer.

The bill removes a provision allowing voters present to select election judges and clerks if none are present for more than an hour after notice to the county election officer.

Technical Amendments

The bill makes technical amendments to standardize terms, remove outdated language, remove references to provisions no longer in law, eliminate a redundant provision, update federal citations, and standardize references, correct errors, and update terms. The bill also repeals a statute requiring certain types of corporations (generally, utilities, financial institutions, and railroads) to comply with the Campaign Finance Act.